

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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EILEEN KELLY,

Plaintiff-Appellant,

v

MICHAEL KELLY,

Defendant-Appellee.

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UNPUBLISHED

August 10, 1999

No. 208310

Wayne Circuit Court

LC No. 96-621880 DM

Before: Kelly, P.J., and Jansen and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from a consent order of separate maintenance in which the trial court ordered that plaintiff cease home schooling the parties' four minor children. We affirm.

Plaintiff and defendant have four children. At the time of trial, the children were thirteen, ten, nine, and six years old. Plaintiff had been home schooling all of the children for the five years preceding trial. After the proceedings began, defendant filed a motion to prohibit plaintiff from continuing to home school the children. Following a bench trial on the issue, the trial court directed that home schooling terminate, and that the children be enrolled in a traditional in-school program.

Plaintiff first argues that this Court should review the trial court's determination de novo. We disagree. Regarding custody issues, this Court reviews a trial court's findings of fact under the great weight of the evidence standard, discretionary rulings under a palpable abuse of discretion standard, and questions of law for clear legal error. *Fletcher v Fletcher*, 229 Mich App 19, 24; 581 NW2d 11 (1998); *Lombardo v Lombardo*, 202 Mich App 151, 159; 507 NW2d 788 (1993).

Plaintiff next argues that the trial court's finding that she could not financially afford to continue home schooling was against the great weight of the evidence. We disagree. The trial court's findings of fact that plaintiff's financial plan for home schooling the children, working part-time and attending college was "risky" was not against the great weight of the evidence. Evidence was presented that plaintiff was not fiscally responsible, as demonstrated by her incurring a credit card debt of approximately \$37,000 while in charge of the family's finances. Further, plaintiff estimated that she would receive a limited amount of money from child support and a part-time job from which to support the family while she

attended college and home schooled the children. The trial court's finding that "the projected income in handling of money for the future is just too risky for [plaintiff] and the four children," was not against the great weight of the evidence. *Fletcher, supra* at 24.

Plaintiff next argues that the trial court erred in holding that home schooling could not continue solely because of economic factors. We disagree with plaintiff's characterization of the court's reasoning. The trial court enumerated several reasons why home schooling was not in the best interest of the children. In addition to finding that the economic factor weighed in favor of discontinuing home schooling, the trial court found that plaintiff had difficulty budgeting her time and activities during the day, as well as the family's finances. The court further observed that plaintiff does not have a background in education, the children were a little withdrawn, the children were not being educated in social skills through home schooling and would need to be involved in additional activities outside the home, which would demand additional time, and further expressed concern that it appeared that the oldest child would be excessively burdened with baby-sitting for the other three children while plaintiff worked and went to college in the evening, after home schooling the children during the day. Because the trial court did not hold that home schooling could not continue solely because of financial concerns, we find no legal error. *Fletcher, supra*, 229 Mich App 24; *Mazurkiewicz v Mazurkiewicz*, 164 Mich App 492, 500; 417 NW2d 542 (1987).

Next, plaintiff next argues that the trial court committed legal error in failing to consider the best interest of the children, and failing to make findings regarding which educational process would be in the children's best interests. In instructing the attorneys regarding the filing of proposed findings and conclusions, the trial court directed the attorneys to address the best interests of the children. When plaintiff's attorney questioned whether the court was referring to the "custody factors," the court responded "[i]t's the custody factors with respect to the education issue," and specifically referred the attorneys to the "catchall" factor, factor (I). MCL 722.23(1); MSA 25.312(3)(I) . When the court announced its decision from the bench three days later, it did not specifically address the standard for decision or the statutory best interest factors. Nevertheless, we are satisfied based on the whole record that the court understood that the applicable standard was the best interests of the children as determined by consideration of the statutory factors, and that the court intended by its comments to address the factors and circumstances it regarded as relevant to the education issue under catchall factor (I).<sup>1</sup>

Plaintiff also contends that MCL 722.23; MSA 25.312(3), of the Child Custody Act is not applicable in deciding education issues. However, in *Lombardo, supra* at 160, this Court determined that the best interest factors apply to education disputes between the parents. Of course, the court is free under MCL 722.23(1); MSA 25.312(3)(I), to consider additional factors such as those advanced by plaintiff, as well as the factors actually addressed by the court.<sup>2</sup>

Finally, plaintiff argues that the trial court abused its discretion in failing to award her sole custody of the children. We disagree. Plaintiff stipulated to joint legal custody at the time the proceedings began and at the time the final order was entered. While the court is not bound by such a stipulation and must determine that such a stipulation is in the best interests of the children, we believe

the court's statements impliedly determined that defendant's sharing joint legal custody was in the best interests of the children.

Affirmed.

/s/ Michael J. Kelly

/s/ Kathleen Jansen

/s/ Helene N. White

<sup>1</sup> We distinguish the instant case from *Lombardo v Lombardo*, 202 Mich App 151, 159; 507 NW2d 788 (1993), where this Court held that the statutory best interest factors are applicable to education disputes, and remanded for the trial court to make findings regarding the factors where the trial court had failed to do so. In *Lombardo*, the trial court specifically declined to determine the best interests of the child under the statute, instead leaving the decision to the primary physical custodian. In this regard, the trial court concluded only that the plaintiff had failed to show that keeping the child in his current school was not in his best interests. Here, the trial court made specific findings addressed to whether continued home schooling was in the children's best interests.

<sup>2</sup> Indeed, we conclude that many of the court's findings can be seen as relevant to the factors advanced by plaintiff.